APPENDIX.

District of Columbia Code (1940 Edition).

Title 19—WILLS, Chapter 3—Probate of Wills.

Sec. 19-301. Citation—Notice by publication—Unknown heirs at law and next of kin.

Upon the filing of a petition for probate of a will a citation shall be issued to all persons who would be entitled to or interested in the estate of the testator in case such will had not been executed to appear in said court on a day named, not earlier than ten days, exclusive of Sundays, after the filing of said petition, and show cause why the prayer of the petition should not be granted. If said citation shall appear from the return thereof to have been served upon all said persons at least five days before the day named as aforesaid, the said court shall proceed, if no caveat be filed, to take the proofs of the execution of said will. * * *

Sec. 19-305. Proof of will—Production of witnesses.

On the day appointed as aforesaid, or such subsequent day as the court may appoint, due proof of such publication and mailing being made, the court shall proceed to take proof of the will. All the witnesses to such will who are within the District and competent to testify must be produced and examined, or the absence of any of them satisfactorily accounted for.

Sec. 19-307. Caveat—Will not to be probated while issues pending.

If, upon or prior to the hearing of the application to admit the will to probate, any party in interest shall file a caveat in opposition, duly verified, and setting forth facts inconsistent with the validity of the will, the said will shall not be admitted to probate until the issues raised by said caveat shall be determined, as hereinafter directed.

Sec. 19-311. Plenary proceedings.

The court may, in all cases of controversy therein, direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party shall require it, the court shall direct an issue to be made up to be tried by a jury.

Sec. 19-312. Trial of issues as to wills—Trial by jury—Notice—Service to absent parties not essential for jurisdiction—Judgment.

Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided,* That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the District Court of the United States for the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the District Court of the United States for the District of Columbia may from time to time prescribe and revise rules and reg-

ulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for impaneling a jury for the trial of said issues shall be the same as if they were being tried in the Circuit Court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be res judicata as to all persons; nor shall the validity of such judgment be impeached or examined collaterally.

The Organic Act Creating the Court of Appeals of the District of Columbia is the Act of February 9, 1893, c. 74, 27 Stat. 434:

"Sec. 1. That there shall be, and there is hereby, established in the District of Columbia a court, to be known as the Court of Appeals of the District of Columbia, which shall consist of one chief justice and two associate justices, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office during good behavior.

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Sec. 6. That the said court of appeals shall establish a term of the court during each and every month of the year excepting the months of July and August, and it shall make such rules and regulations as may be necessary and proper for the transaction of the business to be brought before it, and for the time and method of the entry of appeals and for giving notices of appeals thereto from the supreme court of the District of Columbia, and such other rules and regulations as may be necessary and proper in the premises. If any member of the court shall be absent on account of illness or other cause during the session thereof, or shall be disqualified from hearing and determining any particular cause by having been of counsel

therein, or by having as a justice of the supreme court of the District of Columbia previously passed upon the merits thereof, or if for any other reason whatever it shall be impracticable to obtain a full court of three justices, the member or members of the court who shall be present shall designate the justice or justices of the supreme court of the District of Columbia to temporarily fill the vacancy or vacancies so created, and the justice or justices so designated shall sit in said court of appeals and perform the duties of a member thereof while such vacancy or vacancies shall exist: Provided, That no justice of the supreme court of the District of Columbia shall, while on the bench of said court of appeals, sit in review of any judgment, decree, or order which he shall have himself entered or made.

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The above basic Act was amended in 1934 to change the court's name to the United States Court of Appeals for the District of Columbia (48 Stat. 926, ch. 426), and additional judges were added, two in 1930 (46 Stat. 785, ch. 538), and two in 1938 (52 Stat. 584, ch. 290).

The Act of February 9, 1893, as amended, is incorporated in the Code of the District of Columbia (1940 Edition) as Title 11, Chapter 2:

Sec. 11-201. Constitution.

The United States Court of Appeals of said District shall continue as at present organized, and shall consist of one chief justice and five associate justices, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office during good behavior.

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Sec. 11-205. Terms and rules.

The said United States Court of Appeals for the District of Columbia shall establish by rule of court such terms of the court in each year as to it may seem necessary; *Provided, however,* That

there shall be at least three terms in each year; and it shall make such rules and regulations as may be necessary and proper for the transaction of its business and the taking of appeals to said court. And said United States Court of Appeals for the District of Columbia shall have the power to prescribe what part or parts of the proceedings in the court below shall constitute the record on appeal, except as herein otherwise provided, and the forms of bills of exceptions, and to require that the original papers be sent to it instead of copies thereof, and generally to regulate all matters relating to appeals, whether in the court below or in said United States Court of Appeals for the District of Columbia. If any member of the court shall be absent on account of illness or other cause during the session thereof, or shall be disqualified from hearing and determining any particular cause by having been of counsel therein, or by having as a justice of the District Court of the United States for the District of Columbia previously passed upon the merits thereof, or if for any reason whatever it shall be impracticable to obtain a full court of three justices, the member or members of the court who shall be present shall designate a justice or justices of the District Court of the United States for the District of Columbia to temporarily fill the vacancy or vacancies so created, and the justice or justices so designated shall sit in said United States Court of Appeals for the District of Columbia and perform the duties of a member thereof while such vacancy or vacancies shall exist: *Provided,* That no justice of the District Court of the United States for the District of Columbia shall, while on the bench of said Court of Appeals, sit in review of any judgment, decree, or order which he shall have himself entered or made: *Provided also,* That if the parties to any cause shall so stipulate in writing, by their attorneys and solicitors, such cause may be heard and determined by two justices of the court without calling in any of

the justices of the District Court of the United States for the District of Columbia: *And provided also,* That all motions to dismiss appeals and other motions may be heard by two justices in the event of the absence or disqualification of any one of the justices as aforesaid: *And provided further,* That if in any cause heard before two justices as aforesaid the court shall be divided in its opinion, the judgment or decree of the lower court shall stand affirmed.

Judicial Code, Section 117.

There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established.

Judicial Code, Section 120.

The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignments shall be designated by the court. No judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals.